

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-215540**DATE:** July 20, 1984**MATTER OF:** Keystone Elevator Company, Inc.**DIGEST:**

1. Absent determination of nonresponsibility, the submission of a below-cost bid is not a valid basis upon which to challenge an award.
2. Whether bidder in line for award may have engaged in collusive bidding is one circumstance to be considered by the contracting officer in determining whether bidder is a responsible prospective contractor.
3. GAO will not consider allegation that firm is not small business eligible for set-aside award since conclusive authority to decide matters concerning small business' size status is vested with Small Business Administration.

Keystone Elevator Company, Inc. (Keystone), protests the award of a contract to any other bidder under invitation for bids No. N62472-84-B-0854, a small business set-aside issued by the Naval Facilities Engineering Command, Philadelphia, Pennsylvania (Navy), for elevator and dumbwaiter maintenance, repair and testing.

We dismiss the protest.

Keystone protests that the three bidders lower than itself submitted unrealistically low bids and that the two low bidders may be affiliated, which raises questions of collusive bidding and the small business size status of the bidders.

Whether collusive bidding is indicated is a matter for the determination of the contracting officer who, if he perceives the existence of collusion, is expected to report the situation to the Attorney General. Defense Acquisition Regulation, § 1-111.2, reprinted in 32 C.F.R. pts. 1-39 (1983). With respect to the award of a contract, whether the bidder in line for award may have engaged in collusive bidding is to be considered in the contracting officer's

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determination of the bidder's responsibility. See KDH Corporation and Richard W. Bates, Joint Venture, B-209207, Dec. 14, 1982, 82-2 C.P.D. ¶ 532.

The question of whether a bid price is too low relates to a bidder's responsibility and, absent a determination of nonresponsibility, the submission of a below-cost bid is not a valid basis upon which to challenge an award. Dodson Corporation, B-210413, June 7, 1983, 83-1 C.P.D. ¶ 618.

We will not consider Keystone's allegation that the two low bidders are affiliates, which could preclude them from being considered small businesses. Since, under 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration has conclusive authority to determine matters of small business size status for procurement purposes, our Office does not consider whether a firm is a small business under the size standard applicable to the procurement. Horsburgh & Scott Company; Appleton Machine Company, B-213800; B-213800.2, Dec. 21, 1983, 84-1 C.P.D. ¶ 12.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel